

Notice of Allowability

Application No.

09/767,685

Examiner

Kenneth Bomberg

Applicant(s)

KELLER ET AL.

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the Appeal Brief filed 26 March 2004.
2. ☒ The allowed claim(s) is/are 8-18, 20-22, 24 and 26.
3. ☒ The drawings filed on 19 November 2001 are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☒ Certified copies of the priority documents have been received in Application No. 08/563,109.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413), Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____. |

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with George C. Beck on June 11, 2004.

The application has been amended as follows:

In Reference to Claim 8

In line 12, "and" has been deleted,

In the last line of the claim

--; and

means for preventing contact between said outlets of said dispensing appliance and either said plugs or said mixer inlets, thereby preventing cross-contamination.--

has been inserted between "orientation" and "."

In Reference to Claim 14

In line 8, "and" has been deleted,

In the last line of the claim

--; and

means for preventing contact between said outlets and said plugs, thereby preventing cross-contamination.--

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has been inserted between "orientation" and "."

In Reference to Claim 23, 25 and 27

Claims 23, 25 and 27 have been canceled.

In Reference to Claim 24

In line 1, "claim 23" has been changed to --claim 14--.

In Reference to Claim 26

In line 1, "claim 25" has been changed to --claim 8--.

The above amendments were required to obviate the rejections and place the application in condition for allowance.

Response to Arguments

2. Applicant's arguments filed 26 March 2004 in the Appeal Brief with respect to dependent claims 23-26 have been fully considered and are persuasive, accordingly the rejections as applied to those claims are hereby withdrawn.

Reasons For Allowance

3. The following is an examiner's statement of reasons for allowance:

The prior art fails to teach or fairly suggest in combination with the dispensing appliance or dispensing assembly of claims 8 or 14, means for preventing contact between said outlets of said dispensing appliance and either said plugs or said mixer inlets, thereby preventing cross-contamination, as supported by the specification under 35 U.S.C. 112, 1st and 6th paragraphs.

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Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Election/Restrictions

4. Claims 8 and 14 are generic and allowable. Accordingly, the restriction requirement as to the encompassed species is hereby withdrawn and claims 11 and 15, directed to the species of Figs. 8a and 9a are no longer withdrawn from consideration since all of the claims to this species depend from or otherwise include each of the limitations of an allowed generic claim

In view of the above noted withdrawal of the restriction requirement as to the linked species, applicant(s) are advised that if any claim(s) depending from or including all the limitations of the allowable generic linking claim(s) be presented in a continuation or divisional application, such claims may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 44 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

Interview


5. In an interview following the filing of the Appeal Brief, Mr. Beck was informed that an appeal conference was held on the subject application and Appellant's arguments with respect to claims 23-26 were found persuasive. Subsequently, Mr. Beck agreed to the incorporation of claim 25 into claim 8 and the incorporation of claim 23 into claim 14, and the cancellation of claim 27 in order to place the application in condition for allowance. The authorized examiners amendment was done for expediting allowance without conceding the propriety of the rejection of claims 8 and 14 prior to amendment.

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Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth Bomberg whose telephone number is (703) 308-2179. The examiner can normally be reached on Monday-Thursday from 9:30 AM - 7:00 PM. The examiner can also be reached on alternate Fridays.

The fax phone numbers for the organization where this application or proceeding is assigned is 703-872-9306 for regular communications and After Final communications.


KENNETH BOMBERG
PRIMARY EXAMINER
ART UNIT 3754

K.B.

June 14, 2004